

ORIGINAL

FILED

DEC 12 2008

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

1 George B. Best  
2 Paul Shae  
3 *Law Offices of George B. Best*  
4 P. O. Box 278  
5 35 8<sup>th</sup> Street East  
6 Kalispell, MT 59903  
7 Telephone: (406) 752-8731  
8 FAX: (406) 752-8799  
9 Attorneys for Plaintiff/Appellee

10  
11 IN THE SUPREME COURT FO THE STATE OF MONTANA  
12 Supreme Court Cause No. DA 08-0454

13 LAURA J. RASHID,  
14 Plaintiff/Appellee,  
15 And,  
16 DAVE JOLLY  
17 Defendant/Appellant.

18  
19 **APPELLEE'S AMENDED  
20 RESPONSE TO APPELLANT'S  
21 RULE 22 MOTION AND  
22 MEMORANDUM AND SUPPORT**

23  
24 **COMES NOW** the Plaintiff/Appellee, Laura Rashid, by and through her  
25 attorneys, Paul A. Shae and George B. Best, and amends her response to  
26 Appellant's Rule 22 Motion and Memorandum in Support per this Court's  
27 November 19, 2008 Order.

28  
**RESPONSE**

Appellee asserts that the District Court properly denied Appellant's Motion.

///  
///

///

1           **I. Appellant has not shown good cause for relief.**

2           On September 22, 2008, Appellant filed a Motion to Stay Execution,  
3 Approve Undertaking and Retain Current Bond. Appellee filed her response in  
4 opposition on September 26, 2008.  
5

6           The District Court denied Appellant’s Motion on October 22, 2008. Per this  
7 Court’s Order, the District Court clarified its ruling on December 3, 2008.  
8

9           **A. The District Court properly denied Appellant’s Motion**

10           In order to receive a stay, the Appellant must “obtain the district court’s  
11 approval of a supersedeas bond which shall have 2 sureties.” MT.R.App.P.  
12 22(1)(b).  
13

14           “The purpose of a supersedeas bond as a condition for staying enforcement  
15 and execution on a judgment is to secure the rights of the judgment creditor during  
16 the appeal process.” Rasmussen v. Lee, 276 Mont. 84, 93 (1996).  
17  
18

19           A supersedeas bond should be “in an amount large enough to cover the  
20 entire judgment.” Safeco Ins. Co. v. Lovely Agency, 697 P.2d 1354, 1358 (1985).  
21 In Safeco, the District Court determined a bond of \$250,000 was inadequate to stay  
22 execution of \$300,000 judgment. The District Court concluded the funds were not  
23 enough “to satisfy the judgment and did not protect the interests of the [Appellee]  
24 on appeal.” Id. This Court upheld the decision. A supersedeas bond less than the  
25 judgment would not be appropriate.  
26  
27  
28

1 A supersedeas bond below the amount of liability on the judgment cannot  
2 secure the rights of judgment creditors. Poulsen v. Treasure State Indus., 183  
3 Mont. 439, 442 (1979).  
4

5 In calculating the supersedeas bond amount the Court should also look at the  
6 interest lost and cost incurred due to the appeal. Rasmussen, 276 Mont. at 93.  
7

8 Denial of Appellant's motion will not deny him access to his appeal.  
9 Poulsen v. Treasure State Indus., 183 Mont. 439, 442 (1979).  
10

11 Appellant's motion does not meet and did not meet the requirements of  
12 MT.R.App. Rule 22. In order to stay execution of the District Court's Judgment,  
13 Appellant needs to post a bond at least equal to the judgment. The listed bond is  
14 not sufficient.  
15

16 Appellant's motion is not appropriate and should be denied. As stated  
17 above, the supersedeas bond should protect Appellee's rights during the appeal.  
18

19 The Appellant has not offered an adequate bond or surety. The only listed  
20 bond Appellant intends to post is the \$3,500.00 already posted per the Justice  
21 Court appeal. The judgment in this case is for \$20,477.59. Appellant's motion is  
22 inappropriate and leaves Appellee's claim essentially unprotected.  
23

24 The sureties Appellant lists are not adequate to stay execution of the  
25 judgment. "[A]ppellant must obtain the district court's approval of a supersedeas  
26 bond which shall have 2 sureties." Here, Appellant is offering to post an  
27  
28

1 inadequate bond. Even if the bond were adequate, Appellant has not provided a  
2 showing of how or with what means the sureties are able to pay such an amount.

3  
4 The District Court had proper reason to deny Appellant's motion.

5 Appellee strongly objects to the qualifications of the sureties to pay the  
6 judgment amount.

7  
8 Further, Appellant did not comply with the statutory requirements regarding  
9 the sureties. Although Appellant attempted to comply after he filed his motion for  
10 approval, the District Court had proper justification to deny his motion. Appellant  
11 is essentially taking one stance with the District Court, and then changing it when  
12 asking this Court for relief.  
13  
14

15 If this Court granted Appellant's motion, the Appellant would have to chase  
16 after not one but three individuals in order to secure her judgment.  
17

18 The Court should not only require a bond that is equal to the judgment but  
19 also add interest and costs of the appeal per Rasmussen.

20 Denial of Appellant's motion will not deny him access to the Court.  
21  
22 However, Appellant must post an adequate bond in order to stay the execution of  
23 the District Court's Judgment.  
24

25 Additionally, Appellant's listed sureties are not adequate and Appellee  
26 objects. Appellant has failed to follow the statutory requirements and the  
27 undertakings cannot be approved.  
28

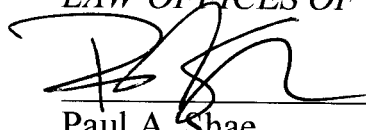
1 Granting Appellant's motion would leave the Plaintiff unprotected.

2 **II. CONCLUSION**

3 Appellee respectfully requests this Court deny Appellant's Motion.

4 **DATED** this 11<sup>th</sup> day of December, 2008.

5  
6  
7 *LAW OFFICES OF GEORGE B. BEST*

8 

9 Paul A. Shae

10 Attorney for Respondent

1 **CERTIFICATE OF SERVICE**

2 The undersigned does hereby certify that on the 1/4<sup>th</sup> day of  
3 December, 2008, a true and correct copy of the foregoing document was  
4 served upon the persons named below, at the addresses set out below their names,  
5 either by mailing, hand deliver, or Federal Express, in a properly addressed  
6 envelope, postage prepaid, or by telecopying, as indicated below.

7 Richard Dejana  
8 Attorney at Law  
9 P. O. Box 1757  
10 Kalispell, MT 59903

- 11  U.S. Mail (first class postage)  
12  Federal Express  
13  Hand Delivery  
14  Telecopy (facsimile)  
15  Other: \_\_\_\_\_

16   
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28